

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the following remarks.

CLAIM FOR FOREIGN PRIORITY

This application claims the priority of French Patent Appln. No. 02/09246, filed July 19, 2002 in paragraph [0001] of the instant specification. A separate Claim for Convention Priority and a certified copy of the priority document were submitted herein on July 21, 2003. Acknowledgment is respectfully requested.

INFORMATION DISCLOSURE STATEMENTS

Applicants thank the Examiner for acknowledging the four previous Information Disclosure Statements and considering the documents cited by applicants. A further Information Disclosure Statement is filed herewith.

STATUS OF CLAIMS AT THE TIME OF MAY 2, 2007 OFFICE ACTION

The statement of the claims pending in the application and of those withdrawn from consideration in the Office Action Summary is incorrect. Claims 1-55 were pending at that time. Claims 1-17, 22-30, 33-44 and 46-55 were then withdrawn from consideration by the Examiner, while Claims 18-21, 31, 32 and 45 were rejected.

CURRENT STATUS OF CLAIMS AND EXPLANATION OF FOREGOING

AMENDMENTS IN LIGHT OF RESTRICTION REQUIREMENT

By the foregoing amendment, applicants have cancelled Claims 49-55, drawn to non-elected Groups II-IV, in compliance with the restriction requirement, which

has been made final. Applicants reserve the right to file divisional applications on the non-elected Groups II-IV.

The Examiner has examined Claim 18 on the merits, but not most of the claims in elected Group I (Claims 1-48), presumably in light of the election of species requirement, even though most or all of the Claim 1-48 read on the various elected species. Since the Examiner has essentially limited examination to Claim 18, applicants have rewritten Claim 18 as an independent claim incorporating therein the features of Claim 17 and Claim 1 from which it directly and indirectly depended respectively. Claims 1 and 17 have therefore been cancelled. However, rather than cancelling the claims in Group I which the Examiner has withdrawn from consideration, applicants have amended these claims so that they are all directly or indirectly dependent from Claim 18. Applicants request that the withdrawn claims in elected Group I be examined on the merits in light of these amendments. All of Claims 2-16 and 19-48 now depend directly or indirectly from Claim 18. Applicants reserve the right to file one or more divisional applications for the portion of the Group I subject matter not examined herein.

DOUBLE PATENTING

Claims 18-21, 31, 32 and 45 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 3, 5, 10, 11, 31, 32 and 45 of "copending Appln. No. US 2005/0118122 A1". The Examiner has cited the U.S. patent application publication number. The U.S. application number is actually Appln. No. 10/622,480. Applicants submit that the claims in both applications are in the state of flux and amendment in one or both cases or a decision to pursue only one of the applications could make the filing of a

terminal disclaimer unnecessary. Therefore, applicants request that the Examiner hold the provisional obviousness-type double patenting rejection in abeyance until the scope of otherwise allowable claims has been determined. In the event that the Examiner is of a mind to allow subject matter herein save for the provisional obviousness-type double patenting rejection, she is urged to telephone the undersigned at the number given below, so that an appropriate terminal disclaimer can be promptly filed.

CLAIM REJECTIONS--35 U.S.C. §103

Claims 18-21, 31-32 and 45 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ramin et al. U.S. Patent No. 6,491,932 B2 in view of Grimm et al. US 2002/0064509 A1.

Although the Ramin et al. US patent is a 102(e)/103 reference, it issued after applicants' French priority date and after the filing date of applicants' French-language U.S. provisional application. Therefore, provided that applicants filed a verified translation of the U.S. provisional application and the Examiner agreed that it supported the present claims, applicants could antedate the U.S. patent. However, it has been determined that the European counterpart of Ramin et al., i.e. EP 1 082 952, which is cited in the accompanying Information Disclosure Statement, was published on March 14, 2001, which was more than one year prior to applicants' U.S. provisional filing date. Thus, the EP version of Ramin et al. is a 102(b)/103 reference and cannot be antedated. As the EP version is in French, applicants will note in their remarks below the corresponding portions of the U.S. patent which is its English-language counterpart and serves as its English translation.

Present Claim 18, the only independent claim now in the application, is drawn to a goniochromatic/light reflecting cosmetic makeup composition, comprising (a) at least one goniochromatic coloring agent suitable for creating a goniochromatic colored background and (b) an amount of light reflective particles suited for creating highlight points that are visible to the naked eye, wherein said reflective particles comprise particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal comprising Ag, Au, Cu, Al, Zn, Ni, Mo or Cr, or mixture or alloy thereof, formulated into (c) a topically applicable, physiologically acceptable medium therefor.

The Ramin et al. invention relates to a cosmetic composition that gives a sparkling metallic appearance (US '932, col. 1, lines 39-43) and accomplishes that end by providing a cosmetic composition comprising metal-coated glass particles as coloring agent (US '932, col. 1, lines 4-6 and col. 2, lines 9-13).

Ramin et al. are silent about combining their metal-coated particles with a goniochromatic agent. In fact, Ramin et al. only teach that their composition can also comprise at least one film-forming polymer which forms an insoluble film (US '932, col. 2, lines 43-47). Indeed, such polymer appear to be present in all of the exemplary compositions of Ramin et al. As noted at column 8, lines 8-11, of the '932 patent, the films produced in accord with that invention afford a glossy and sparkly makeup product/nail varnish. Note also the Example 2 composition of the reference, which provides a nail varnish which, when applied to nails, gives a red makeup with a sparkling metallic appearance. Similarly the nail varnish of Example 1 of the reference (which, like Example 2, includes plasticizers and resin as the film forming polymer) when applied to nails, produces a film with a very glossy metallic

appearance. Thus, the Ramin et al. products have a smooth and polished metallic appearance, not a 3D effect, and not a plurality of highlight points as in the instant invention (paragraph [0050] of the as-filed specification).

Accordingly, one of ordinary skill would be led by Ramin et al. to associate some metal-coated products with an insoluble film-forming polymer; this is a different cosmetic composition with a cosmetic effect completely different from the one achieved by the present invention.

Indeed, nothing in Ramin et al. would lead one of ordinary skill to predict that the use of reflective particles comprising particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal comprising Ag, Au, Cu, Al, Zn, Ni, Mo or Cr in combination with at least one goniochromatic agent in one composition, would lead to creating a volumizing effect according to the invention. Indeed, in view of Ramin et al.'s teachings, the skilled artisan would have necessarily formulated these compounds in separate compositions, and would have obtained cosmetic effects which are completely different from those of the present invention.

Grimm et al. disclose a cosmetic composition, for example, a makeup composition, containing at least one continuous lipophilic phase, for example, a nonanhydrous phase, and at least one goniochromatic pigment. Grimm et al. do not disclose a composition comprising at least one goniochromatic coloring agent in combination with light reflective particles able to create highlight points that are visible to the naked eye. Grimm et al. mention the possibility for a composition to contain some goniochromatic pigments and further pearlescent pigments. Actually, the pearlescent pigments as described by Grimm et al. do not fall within the list of reflective particles suitable for use in the present invention (paragraphs [0036] and

[0037] of the instant as-filed specification). It is indicated at the end of paragraph [0050] of the as-filed specification for the present application that the reflective particles will preferably be chosen such that the highlight points are discretely distributed over the colored goniochromatic surface.

Moreover, the instant reflective particles are in an amount that is sufficient to be able to observe simultaneously, when the cosmetic composition is applied to a support such as a lip, a plurality of highlight points, for example more than about ten, or even more than about fifty, or even more, for example, more than one hundred or several hundred. See the end of paragraph [0050] of the as-filed specification.

Finally, the instant specification reports that some pearlescent pigments such as FLAMENCO® are not suitable for being reflective particles according to the invention. See paragraph [0056] of the instant specification.

Thus, the instant invention is not obvious with regard to Grimm et al. Grimm et al. even teaches the person of ordinary skill in the art away from introducing such reflective particles in order to create some highlight points visible to the naked eye (in the sense that Grimm et al. never suggest any materials that would create highlight points).

Thus, nothing in the teachings of Ramin et al. or Grimm et al., separately or in combination, would lead the skilled person to produce the instant unique composition, which is:

- capable of creating a volumizing effect once applied to a support/surface;
- comprising reflective particles comprising particles of a natural or synthetic substrate at least partially coated with a layer of at least one metal comprising Ag,

Au, Cu, Al, Zn, Ni, Mo or Cr, or mixture or alloy thereof, for creating highlight points

that are visible to the naked eye;

- comprising at least one goniochromatic coloring agent;

in order to provide a volumizing effect according to the instant invention.

In view of the foregoing, further favorable action is believed to be in order and is earnestly solicited.

Respectfully submitted,

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